

September 28, 2009

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TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
SEPTEMBER 28, 2009

MEMBERS PRESENT: MICHAEL KANE, CHAIRMAN
FRANCIS BEDETTI, JR.
KIMBERLY VOLPE

ALSO PRESENT: ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

NICOLE JULIAN
ZONING BOARD SECRETARY

ABSENT: PAT TORPEY
JAMES DITTBRENNER
LEN MCDONALD

REGULAR MEETING

MR. KANE: I'd like to call the September 28, 2009
meeting of the New Windsor Zoning Board of Appeals to
order.

APPROVAL OF MINUTES DATED 8/10/09

MR. KANE: Motion to accept the minutes of August 10
as written.

MS. VOLPE: So moved.

MR. BEDETTI: I'll second it.

September 28, 2009

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ROLL CALL

MS. VOLPE	AYE
MR. BEDETTI	AYE
MR. KANE	AYE

PRELIMINARY_MEETINGS:

SONIC_DRIVE-IN_(09-31)

MR. KANE: Tonight's first preliminary meeting is Sonic Drive-In referred from planning board for interpretation and/or variance required for 22 menu boards on site. Are such boards signs or are they exempt? If considered signs, do they require area type variances? Variance for facade sign 41" x 90" proposed and 2.5 feet by 10' feet maximum permitted at Wal-Mart complex Route 300. Just want to state your name and tell us who you are and speak loudly enough for that young lady over there to hear you.

MR. KOEHLER: Dan Koehler, Hudson Land Design, I'm the engineer for the applicant.

MR. KANE: So where would you guys like to start? Do you want to tackle issue 1 or issue 2? Well, you might as well go with issue 1.

MR. KOEHLER: Well, first and foremost, let me just give you guys a quick little rundown on how Sonic works. I'm not sure if any of you have been in the newer one up in Kingston or Wappingers Falls or if you have been to one anywhere else in the nation, there's over 3,500 stores nationwide. They have been around since the '50s, it's a drive-in, drive-thru type restaurant, you come in and if choose to do so they can go right on into the service stalls which are under some canopies and they can ring the button and they'll take the order and then the car hop will bring the food right out to the car or they can go use the drive-thru or they can either park, actually walk onto the patio where you can order through the patio board. There is no indoor seating in the restaurant and it's imperative for our operation in order to perform our daily routine that we have the menu boards that are on the driver's side of each stall as you pull in for the service and

that's what we're here for is mainly because we want to make sure that if they were considered signs or if they are operational in nature which is how we feel about it cause we can't operate our store without them.

MR. KANE: Okay, so tell me, keep it simple, explain to me why they are not signs.

MR. KOEHLER: I choose to look at them as our menu as if somebody comes into the restaurant and they are sitting there at the table and you normally would be handed a menu from a waitress or waiter so in our store we need them for the operation so the people can understand what they can order, what their choices are so they can order.

MR. KANE: When they use the menus electronically, do they speak through them to the people that are inside or just press buttons?

MR. KOEHLER: You press the button and the person inside will actually respond back to you and they will take your order, similar to a drive-thru as if you're waiting for them but you control when you're ready to order by hitting the button.

MR. KANE: You have vocal communication?

MR. KOEHLER: Yes and you can also pay right there as well.

MR. SLATER: Doug Slater, I'm a Sonic franchisee. The difference between what we're calling our menu housing and a sign these are really no different than at a traditional drive-thru where you pull up to a preview board or an order board, they're purely directional for us to do our business as opposed to any type of advertisement.

MR. KANE: Okay. So you guys know what New Windsor

does we have a preliminary meeting so we can get an idea of what you have and what we need to make a decision. So the same type of thing is going to take place in the public hearing when we set that up. We're just a little, we're wondering why this was sent down, there's nothing specifically that says that there's menu boards and signs so we're just trying to get a grasp on what it is you're doing.

MR. SLATER: Well, at the planning board meetings, I think that they, not I think, at the meeting, they, the members of the board put on the record that they all felt that these were menus, not signs but really felt that to be thorough dot the Is and cross the Ts that they'd like an interpretation from you folks regarding the menus as opposed to the clear issue which is the sign on the building which dimensionally one dimension is outside of the allowable dimension.

MR. KANE: That's why I asked if there was verbal communication through them, that kind of stuff.

MR. SLATER: Right, it's really a miniaturized, I'm sure we have all been to a McDonald's drive-thru or Burger King or something, it's a miniature version of that ordering board.

MS. VOLPE: Is there a copy of the planning board minutes?

MR. KANE: I'm sure we can get a copy for everybody. Can you get us that?

MS. JULIAN: Yes.

MR. KANE: So we can get a copy of that. Also I want to follow up with the building department to see how, basically see how the signs at Burger King and McDonald's work cause I don't remember their menu board and they had a number of signs come up when they did

the K-Mart plaza. So I want to see how that was handled because I have been there and that wasn't part of it and we did a lot of signs so I want to see if there's a distinction from the building department too when that came up so we have to do a little research.

MR. SLATER: The night that we met with the planning board and the discussion of the menu housing came up, they actually each individually put on the record their feelings about these and I think five people individually said they felt they were menus.

MR. KANE: Okay.

MR. SLATER: I believe Mark Edsall had forwarded a recommendation of the same.

MR. BEDETTI: Do we have a copy? It's not in our packet.

MR. KANE: This is just that they were sent down here, it's a referral down to us, it's not a recommendation as to that but we'll see that in the minutes so Nicole will get us all copies of the minutes and you can e-mail those.

MS. JULIAN: Okay.

MR. KOEHLER: I think the other important thing that the building department and the planning board was trying to establish was that they, that they didn't set a precedent for other restaurants that don't need it like we do. This is an operational demand for us in order to operate, it's just, it has to be this way. So if these other fast food chains saw ours that they couldn't say well, they've got them so it's a matter of getting it on the record and dot the Is and crossing the Ts that this is specific to our operation and that we need it and that's why we're allowed to get that from you guys or from the planning board as opposed to

just saying well, we thought it was okay so we didn't.

MR. KANE: How are these menus illuminated?

MR. KOEHLER: Internally.

MR. SLATER: Back lit.

MR. KANE: Nothing flashing?

MR. KOEHLER: No.

MR. SLATER: In fact, they don't even register on the photometric study, it's very subtle and I think they're about maybe this big rectangular just back lit, it's literally just enough that you can read the menu at night. There's nothing else on there other than menu items.

MR. KANE: All right.

MR. KOEHLER: The only thing that flashes is the red button after you hit it when you're waiting for them to respond.

MR. KANE: Gotcha. Okay, as far as the menu boards does anybody else have any other questions?

MR. BEDETTI: Yes. These are all separated from the building, none of these are attached to the building?

MR. KOEHLER: Right, no, they are all attached to the columns on the canopy.

MR. BEDETTI: Now, do you have a facade sign that says Sonic on it?

MR. KOEHLER: Yes.

MR. BEDETTI: One that's attached and then freestanding

sign is that here?

MR. KOEHLER: Yes, that's the menu.

MR. BEDETTI: Obviously, the directional signs, exit entrance?

MR. KOEHLER: Right.

MR. BEDETTI: And the lettering or the information that's on these menu signs is not visible from the road?

MR. SLATER: Oh, no, no. In fact, you'd be hard pressed to read it from here to here from me to you.

MR. BEDETTI: So it is not an advertising?

MR. KOEHLER: Absolutely not.

MR. BEDETTI: Where signs are basically drawing the public in?

MR. SLATER: There's nothing on it other than menu items and pricing, it's purely informational.

MR. KANE: Nothing you can see from the road and pick anything up so you've got to pull up, see it and its function is to give you menus that you can push a button and talk to the people inside?

MR. KOEHLER: Right.

MR. BEDETTI: Other questions. Where are these menu, where these menu boards, these are obviously all on one side of your building, they are all housed on one side of your building?

MR. KOEHLER: Right.

MR. BEDETTI: Let me orient myself, 300's out here.

MR. KOEHLER: Right.

MR. BEDETTI: Credit union is up here.

MR. KOEHLER: Yes.

MR. SLATER: You know what might help to think about it if you haven't been to maybe an old A & W but maybe a drive-in movie, have you ever been at an old drive-in movie where you have the speaker next to the car?

MR. BEDETTI: I have to admit that?

MR. SLATER: I'll admit to it, I've been there. there's a stanchion next to the driver's side and it's a small speaker and then right above the speaker is the menu.

MR. KANE: Okay.

MR. SLATER: That's in this case 20 parking spaces.

MR. BEDETTI: The other question was the menu board itself, what was the dimensions on the menu board itself?

MR. SLATER: Rough size of that board, right?

MR. KOEHLER: Yes, they're 24 inches high by 38 inches.

MR. SLATER: That's 24 x 36.

MR. KOEHLER: It's similar to this.

MR. SLATER: Didn't we send a picture of one?

MR. KANE: Yes, it's in here when you go to this page right here, right in there, there's your sign it has

the dimensions on it.

MR. SLATER: We took an actual picture.

MR. KANE: Yeah, we have them here.

MR. SLATER: That way you can see it relative to a car.

MR. KANE: Further questions on the menu boards? Okay.

MR. SLATER: We have opened in Kingston and Wappingers in the last year and both cases they were not considered signs.

MR. KRIEGER: Did you have to get a variance or interpretation there?

MR. SLATER: No, not in either case, no.

MR. KRIEGER: They just allowed it?

MR. SLATER: Yes, right from the planning board.

MR. KOEHLER: I think that was one of the most important things for them without them specifically saying it.

MR. KANE: They want to make sure they didn't set a precedent. Facade sign.

MR. KOEHLER: If you don't mind, I'm going to have to ask you to step backwards and just finish this conversation up if we could. Are we saying then that you're going to have to do some informational research then get back to us?

MR. KANE: We can't make a decision tonight the way New York State works, it has to be a public hearing.

MR. KOEHLER: Even if it's an interpretation?

MR. KANE: Absolutely, no matter what we decide it has to be in a public hearing. New Windsor does it that way. I have been in other towns where there's one meeting, you go in, for the majority of the people if you don't have the right information you lose, you don't get a second shot. You have to wait six months to come back. So New Windsor is on the ball having a preliminary meeting.

MR. KRIEGER: It's particularly valuable where you have an application like this which is out of the mainstream and if the board members do have questions they can, it gives them a chance to ask them and get some information so they don't come in with your presentation cold.

MR. KOEHLER: Right, no, I appreciate it.

MR. KANE: It's a little different than what we have seen so we want to get the planning board meeting minutes.

MR. KOEHLER: Thank you for clearing that up cause there's other towns that make the interpretation right then and there.

MR. KANE: We're a little different.

MR. KOEHLER: Okay, fair enough.

MR. KANE: Facade sign.

MR. KOEHLER: So the facade sign we're allowed 2 1/2 foot by 10 on the width, 2 1/2 on height and we have 41 1/2 by 90 sign, so we're asking for relief of 11 inches in the height.

MR. SLATER: The square footage of the sign is still within the allowable 25 square feet and the actual sign

area is 25 square feet, it's purely the height on this side of the sign here, the sign's dimensionally different every which way so it's just this here but I think we're about 30 inches or 39 inches short.

MR. KOEHLER: It's 30 1/2 inches short on the width.

MR. SLATER: And the square footage meets the--

MR. KANE: Square footage is right about that so no big issue from what I see.

MR. BEDETTI: That's a two sided sign?

MR. KOEHLER: No, it's actually on the facade of the building so it's on the one tower.

MR. KANE: Freestanding not involved.

MS. VOLPE: Is that sign lit up?

MR. KOEHLER: Yes, that's also internally lit. We can't afford to actually come back for another meeting, we're under very strict time lines with Wal-Mart.

MR. KANE: With your application if we change the application a little bit, not just for are they signs or boards, if considered signs do they require area type variances you would require, we would probably look at doing, calling them freestanding signs.

MR. KRIEGER: So if the board says yes, they are signs and require area variances, the way it is now you'd have to come back to get the variances.

MR. KANE: You're requesting freestanding signs at least covers that base if we have to go there and it doesn't delay anything.

MR. KOEHLER: That's a great idea.

MR. KANE: So we'll make that change in the, so it goes out in the public notice.

MR. KRIEGER: At the public hearing you'll have a chance and I assume you will in some detail make the case as far as this being rather unique and not being like other fast food places, unique need that you alluded to then it would be on the record and the public would have a chance, the reason for the public hearing is so that the public has a chance to be here and say whatever they want to say. Sometimes they say things which are interesting to the board, sometimes not.

MR. KANE: We want to make sure we have enough on there in case somewhere down the line something comes up. Any further questions?

MR. BEDETTI: Is this, do you own this property or are you leasing?

MR. SLATER: We're purchasing this property.

MR. KOEHLER: From Wal-Mart which is actually the reason I'm saying we have very strict time lines from them to get our approvals. If this was to kick into an extra ZBA meeting passed next month that would put us in a very bad spot.

MR. BEDETTI: If it was not your property, you're going to be leasing the property then we may need to get some input from the people.

MR. KANE: We'd need a proxy.

MR. KRIEGER: You'd need a proxy but if they're the contract vendee then as soon as they become owners the variance is acceptable.

MR. KANE: Any further questions? I'll accept a motion.

MR. BEDETTI: I will make a motion that we schedule a public hearing for Sonic Drive-In regarding the interpretation of 22 menu board or sign interpretation whether they would be menu boards or signs.

MR. KANE: Or freestanding signs.

MR. BEDETTI: Or freestanding signs which basically they're freestanding, they're not attached to the building.

MR. KRIEGER: That's the determination you're going to make at the public hearing.

MR. BEDETTI: And also included in that should we do all in one motion?

MR. KANE: Yes.

MR. KRIEGER: You've got three, the variance for the facade sign, the one that you already covered and the variances for the number of freestanding signs.

MR. BEDETTI: We're scheduling a public hearing.

MR. KANE: Right.

MR. BEDETTI: All right, so we covered the menu boards and the request for a variance for a facade sign which measures 41 inches by 90 inches and is permitted only 2 1/2 feet by 10 feet at the Wal-Mart plaza on Route 300.

MS. VOLPE: Second.

ROLL CALL

MS. VOLPE AYE

MR. BEDETTI AYE
MR. KANE AYE

MR. KOEHLER: One quick question procedurally you guys are going to open it right up to the public?

MR. KANE: We'll start off with you describing exactly what you did here, what you want to do, take it from there, any questions from the board, at that point, I will open it up to the public for whoever's here, if they speak, if there's anybody here for it, we close that down, bring it back to the board for any further questions. If they're speaking at that point that's when you'd answer whatever questions they have. Anything that may come up from the public there that may raise a question up here that will happen after we close the public portion of the hearing then we make a decision and then you know right then and there.

MR. KOEHLER: Very good, thank you.

MR. SLATER: And do we know the date of that hearing?

MR. KANE: We have one meeting in October, it's going to be like the 24th.

MR. KOEHLER: I think it's the 26th.

MS. JULIAN: The 26th so you'll come in and do the labels with me.

MR. KOEHLER: Fine.

MR. KANE: Okay, you're all set, gentlemen, thank you very much. Have a good night.

MARY_ANN_CORBETT_(09-32)

MR. KANE: Mary Ann Corbett is the next preliminary meeting, request for a proposed 7 x 16 foot porch with roof will not meet minimum 45 foot front yard setback. Variance of 13 feet is required at 12 Walnut Street in an R-4 zone.

MR. CORBETT: I'm Kevin Corbett, Mary Ann's my sister. The house itself is not 45 feet off the road so there was an existing cinderblock front porch that's coated with cement which since the '50s when the house was built and just crumbled and she hauled it away. Now her front door is about 4 feet, I think she sent pictures in, about 3 feet, 4 feet, I'm not sure how tall off the front lawn so what she wants to do instead of just putting a stoop, she'd like to put a front porch on the house but like I said, the house itself isn't even 45 feet off the road.

MR. KANE: Going to ask some questions that may seem stupid but I've got to ask them anyway. Cutting down any trees, substantial vegetation in the building of the porch?

MR. CORBETT: No.

MR. KANE: Creating any water hazards or runoffs?

MR. CORBETT: No.

MR. KANE: Any easements running through where you want to build the porch?

MR. CORBETT: No.

MR. KANE: Even though the home is closer than that looking from the picture that you have right here, if you build that porch the porch itself will not extend further, closer to the street than other porches and

homes that are on your block?

MR. CORBETT: Correct.

MR. KANE: Okay, and the other issue would be that obviously without at porch right there there's a safety issue with opening that door?

MR. CORBETT: Of course, yeah, I don't know if you can see that.

MR. KANE: Approximate three foot drop.

MR. CORBETT: Right, what she wants to do is the house has a jog right here, she wants to build a front porch from the jog to the end of the house just to be able to put a couple chairs out there.

MR. KANE: This is the one I was talking about where you can see the porch down there extending further and if that comes out it's going to be right in line with it.

MR. CORBETT: I mean it's just for a couple chairs and, you know, I mean, it's not going to be--

MR. KANE: Any further questions from the board? I'll accept a motion.

MS. VOLPE: I will offer a motion that we set up Mary Ann Corbett to a public hearing for her request for proposed 7 x 16 foot porch with roof and will not meet a 45 foot front yard setback, variance of 13 feet is required at 12 Walnut Street in an R-4 zone.

MR. BEDETTI: Second it.

ROLL CALL

MS. VOLPE AYE

MR. BEDETTI AYE
MR. KANE AYE

MR. CORBETT: What does she have to do?

MS. JULIAN: I'll call her.

MR. KANE: Same thing you have to come back for a
public hearing.

MS. JULIAN: I'll call her.

MR. CORBETT: Okay.

MS. JULIAN: I told her I would call her after all
this.

MR. CORBETT: Thank you, ladies and gentlemen.

PUBLIC HEARINGS:

VINCENT & KATHRYN D'AMATO (09-30)

MR. KANE: Public hearing for Vincent and Kathryn D'Amato request for area variance for proposed 10 x 12 shed, a variance of 3 feet is requested at 634 Mt. Airy Road.

Mr. and Mrs. Vincent D'Amato appeared before the board for this proposal.

MR. KANE: Tell us your name, address and tell us exactly what you want to do.

MR. D'AMATO: Vincent D'Amato, 634 Mt. Airy Road, New Windsor. And we're just applying for a 3 foot variance to put a shed on our side of our property.

MR. KANE: Cutting down any trees, substantial vegetation in the building of the shed?

MR. D'AMATO: No.

MR. KANE: Creating any water hazards or runoff?

MR. D'AMATO: No.

MR. KANE: Is there any easements running through the area where you want to put the shed?

MR. D'AMATO: No.

MR. KANE: Is the shed similar in size and nature to other sheds in your neighborhood?

MR. D'AMATO: Yes.

MR. KANE: There's no other place on your property that you can put this shed without requiring a variance?

MR. D'AMATO: I guess no.

MR. KANE: So on either side of the house if you place the shed you're looking at the same thing it's pretty equidistant, you'd need a variance?

MR. D'AMATO: It's 25 feet on either side and we have an existing easement in the back.

MR. KANE: So no matter where for a standard size shed which I would assume 10 x 12 is fairly standard would you need some kind of a variance?

MR. D'AMATO: Yes.

MR. KANE: Okay, any questions at this point from the board? At this point, I will open it up for the public and wait 20 minutes to see if anybody wants to speak. They know I'm kidding. Seeing as there's nobody here, we'll close the public portion of the meeting and ask Nicole how many mailings we had.

MS. JULIAN: On the 15th day of September, 2009, I mailed out 22 addressed envelopes with no response.

MR. KANE: If there's no further questions, I'll accept a motion.

MR. BEDETTI: I will make a motion that we grant the variance for proposed 10 x 12 shed, a 3 foot variance is requested for 634 Mt. Airy Road in an R-3 zone by Vincent and Kathryn D'Amato.

MS. VOLPE: I'll second the motion.

ROLL CALL

MS. VOLPE AYE

MR. BEDETTI AYE

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MR. KANE AYE

MR. KANE: No further business, I'll accept a motion to adjourn.

MS. VOLPE: So moved.

MR. BEDETTI: Second it.

ROLL CALL

MS. VOLPE	AYE
MR. BEDETTI	AYE
MR. KANE	AYE

Respectfully Submitted By:

Frances Roth
Stenographer

